

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No.: 23-cv-20736-BLOOM/Otazo-Reyes

JONPAUL MARCEL NADEAU,

Plaintiff,

v.

**COLDWELL BANKER RESIDENTIAL
REAL ESTATE LLC, et al.,**

Defendants.

**COLDWELL BANKER RESIDENTIAL REAL ESTATE LLC'S
ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendant Coldwell Banker Residential Real Estate LLC ("CBRRE"), by and through undersigned counsel, hereby files its Answer to Complaint and Affirmative Defenses.

1. CBRRE admits that Plaintiff JonPaul Marcel Nadeau ("Plaintiff") purports to set forth a cause of action for copyright infringement. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1 of the Complaint and therefore denies same.

2. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Complaint and therefore denies same.

3. CBRRE admits the allegations in Paragraph 3 of the Complaint.

4. CBRRE admits that Ms. Giusti is a licensed sales associate in the state of Florida. CBRRE denies the remaining allegations of Paragraph 4 of the Complaint.

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5. Paragraph 5 of the Complaint does not require an admission or a denial from CBRRE.

6. CBRRE denies that it copied Nadeau's copyrighted Work from the internet or prior real estate listings without Nadeau's permission and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6 of the Complaint and therefore denies same.

7. CBRRE denies the allegations in Paragraph 7 of the Complaint.

8. CBRRE admits that Ms. Giusti is a licensed sales associate affiliated with Coldwell Banker as an independent contractor pursuant to a written independent contractor agreement. CBRRE denies the remaining allegations of Paragraph 8 of the Complaint.

9. CBRRE denies the allegations in Paragraph 9 of the Complaint.

10. Chapter 475, Florida Statutes, speaks for itself. To the extent that Paragraph 10 of the Complaint mischaracterizes or is inconsistent with Chapter 475, those allegations are denied..

11. CBRRE denies the allegations in Paragraph 11 of the Complaint.

Jurisdiction and Venue

12. CBRRE admits that Plaintiff brings this action under the Copyright Act, 17 U.S.C. § 501.

13. CBRRE admits that the Court has subject matter jurisdiction over Plaintiff's claims.

14. CBRRE admits that it is subject to personal jurisdiction in Florida.

15. CBRRE admits that venue is proper in this District.

Defendants

16. CBRRE admits the allegations in Paragraph 16 of the Complaint.

17. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint and therefore denies same.

The Copyrighted Work at Issue

18. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Complaint and therefore denies same.

19. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint and therefore denies same.

20. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Complaint and therefore denies same.

21. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of the Complaint and therefore denies same.

Infringement by Defendants

22. CBRRE admits that it has not licensed the subject images from Plaintiff. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22 of the Complaint and therefore denies same.

23. CBRRE denies the allegations in Paragraph 23 of the Complaint.

24. CBRRE denies the allegations in Paragraph 24 of the Complaint.

25. CBRRE denies the allegations in Paragraph 25 of the Complaint.

26. CBRRE denies the allegations in Paragraph 26 of the Complaint.

27. CBRRE denies the allegations in Paragraph 27 of the Complaint.

28. CBRRE admits that it has not licensed the subject images from Plaintiff. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 28 of the Complaint and therefore denies same.

29. CBRRE admits that Plaintiff sent correspondence on November 8, 2022. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 29 of the Complaint and therefore denies same.

Count I
Copyright Infringement by Giusti

30. To the extent that any response is required from CBRRE, CBRRE realleges its responses to Paragraphs 1-29 as if set forth verbatim herein.

31. To the extent that any response is required from CBRRE, CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31 of the Complaint and therefore denies same.

32. To the extent that any response is required from CBRRE, CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 of the Complaint and therefore denies same.

33. To the extent that any response is required from CBRRE, CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 of the Complaint and therefore denies same.

34. To the extent that any response is required from CBRRE, CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 of the Complaint and therefore denies same.

35. To the extent that any response is required from CBRRE, CBRRE is without

knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 of the Complaint and therefore denies same.

36. To the extent that any response is required from CBRRE, CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 of the Complaint and therefore denies same.

37. To the extent that any response is required from CBRRE, CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 of the Complaint and therefore denies same.

Count II
Vicarious Copyright Infringement by Coldwell

38. CBRRE realleges its responses to Paragraphs 1-29 as if set forth verbatim herein.

39. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 of the Complaint and therefore denies same.

40. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 of the Complaint and therefore denies same.

41. CBRRE is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41 of the Complaint and therefore denies same.

42. CBRRE denies that it has the right or ability to supervise infringing activities as any such activities are not authorized by CBRRE and if done are not within the course and scope of the independent contractor relationship between CBRRE and Ms. Giusti.

43. CBRRE denies that it had any knowledge of any infringing activities or that

any alleged infringement was the proximate cause of any financial benefit CBRRE may have received, if any. CBRRE denies the remaining allegations of Paragraph 43 of the Complaint.

44. CBRRE denies the allegations in Paragraph 44 of the Complaint.

45. CBRRE denies the allegations in Paragraph 45 of the Complaint.

46. All allegations not specifically admitted by CBRRE are hereby denied.

PRAYER FOR RELIEF

WHEREFORE, CBRRE prays that this Court enter judgment in its favor on all claims alleged in the Complaint, award CBRRE reimbursement of its reasonable attorney fees and costs, and grant CBRRE such further relief as the Court deems appropriate.

FURTHER ANSWER AND AFFIRMATIVE DEFENSES

By way of further Answer and as affirmative defenses, CBRRE denies that it is liable to Plaintiff on any of the claims alleged and denies that Plaintiff is entitled to damages, treble or punitive damages, equitable relief, attorneys' fees, costs, pre-judgment interest or to any relief whatsoever, and states as follows:

First Affirmative Defense

As a first, separate and distinct affirmative defense, CBRRE asserts that the Complaint is barred as Plaintiff has failed to properly plead the proper elements upon which relief can be granted.

Second Affirmative Defense

As a second, separate and distinct affirmative defense, CBRRE asserts that the

Complaint is barred because Plaintiff did not timely file his copyright application within three months after the first publication of the work at issue.

Date: April 12, 2023

Respectfully submitted,

FRIEDLAND VINING, P.A.

/s/Jaime Rich Vining

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Counsel for Defendant Coldwell Banker

Residential Real Estate LLC

CERTIFICATE OF SERVICE

I hereby certify that on the above referenced date, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the Manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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Service via CM/ECF

/s/Jaime Rich Vining
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